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8 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
9 FOR THE COUNTY OF LOS ANGELES, CENTRAL DISTRICT

10 ANTELOPE VALLEY GROUNDWATER  
11 CASES  
12

Judicial Council Coordination Proceeding  
No. 4408

CLASS ACTION

Santa Clara Case No. 1-05-CV-049053  
Assigned to the Honorable Judge Komar

**Motion in Limine No. 1 By Palmdale Water  
District To Preclude Evidence Regarding  
Water Production By Vulcan Materials  
Company At Sun Valley Facilities;  
Memorandum of Points and Authorities In  
Support Thereof; Declaration of Thomas S.  
Bunn III In Support Thereof**

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20 PALMDALE WATER DISTRICT ("District") hereby moves for an order, *in limine*, to  
21 preclude VULCAN MATERIALS COMPANY ("Vulcan") from making references to or introducing  
22 evidence of issues beyond the scope of trial, Phase Four. This Motion is made pursuant to Evidence  
23 Code Section 352 on the grounds that such evidence has the potential of prolonging  
24 and confusing the issue, on the memorandum of points and authorities submitted herewith, on the  
25 papers and records on file herein, and on such oral and documentary evidence as may be presented at  
26 the hearing of this motion.  
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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 By this Court's decision, Phase Four of the trial will determine the current groundwater  
4 production of all parties for years 2011 and 2012, as well as years 2000 through 2012 if the party  
5 timely produces such evidence of water production in discovery. Phase Four will also determine the  
6 parties' claimed reasonable and beneficial uses of water based on the amount of water actually used by  
7 each party for those respective years. Vulcan's use of Antelope Valley groundwater at its Palmdale  
8 facility and Big Rock Creek facility will be at issue in Phase Four of the trial.

9 Vulcan will seek to offer evidence of the water use at a separate facility known as the Sun  
10 Valley facility, which is in the San Fernando Valley, not the Antelope Valley. This water comes from  
11 a completely separate source. This evidence will be offered, not to establish Vulcan's *current*  
12 groundwater production in the Antelope Valley, but as evidence of its *future* groundwater production  
13 when it moves operations from Sun Valley to Big Rock Creek in the indeterminate future. This  
14 evidence should be excluded because it does not represent a current reasonable and beneficial use of  
15 groundwater from the Antelope Valley groundwater basin.

16 In addition to the foregoing evidence, Vulcan has provided other evidence, which pertains to  
17 its *actual current groundwater production* for use at its Palmdale and Big Rock Creek facilities. The  
18 District does not object to this evidence.

19 In order to ensure the orderly progression of Phase Four of the trial, Vulcan should be  
20 precluded from attempting to introduce any evidence pertaining to its use of non-Antelope Valley  
21 groundwater at its other facility in Sun Valley. This evidence is outside the scope of the issues to be  
22 tried in Phase Four and will likely prolong and confuse the issues. Accordingly, the District  
23 respectfully seeks an order, *in limine*, precluding Vulcan from making reference to or introducing  
24 evidence of groundwater production at its Sun Valley facility.

25 **II. ARGUMENT**

26 Vulcan conducts a mining operation in which it excavates aggregate rock, washes and  
27 segregates that rock for processing, and distributes its rock products to various consumers in Southern  
28 California. Currently, the rock that is excavated at Vulcan's Big Rock Creek facility is shipped by rail

1 to its Sun Valley facility for washing and further processing. It has become evident from the  
2 *Declaration of Robert Bowcock In Lieu of Deposition Testimony For Phase 4 Trial* and from the  
3 deposition of Mr. Bowcock, who has been selected by Vulcan as the person most knowledgeable of  
4 Vulcan's plan to move its operations, that Vulcan will attempt to introduce evidence during Phase  
5 Four regarding Vulcan's use of water at its Sun Valley facility. Vulcan postulates that its facility at  
6 Sun Valley "will be moving its operations" to the Big Rock Creek facility and that the shipping of the  
7 aggregate from Big Rock Creek to Sun Valley "will be ending soon" because "the Sun Valley Facility  
8 is in the process of becoming depleted." (Declaration of Robert Bowcock In Lieu of Deposition  
9 Testimony For Phase 4 Trial (Jan. 31, 2013), hereinafter referred to as "Bowcock Decl.", p. 2, lines  
10 12-13, 17-19; attached hereto as Exhibit "A".)<sup>1</sup> It is Vulcan's position that because this of this move,  
11 its current groundwater production at Big Rock Creek should include the production amounts at its  
12 Sun Valley facility. (Id., p. 2, lines 10-12.)

13 Evidence Code Section 350 provides that only relevant evidence is admissible. Even if such  
14 evidence is deemed relevant, "the court in its discretion may exclude evidence if its probative value is  
15 substantially outweighed by the probability that its admission will (a) necessitate undue consumption  
16 of time or (b) create substantial danger of undue prejudice, of confusing the issue, or of misleading the  
17 jury." (Evid. Code § 352.) Evidence should be excluded when the dangers of undue  
18 prejudice, confusion, or time consumption "substantially outweigh the probative value of relevant  
19 evidence." (*Vorse v. Sarasy* (1997) 53 Cal.App.4th 998, 1008.) Any references by Vulcan to issues  
20 outside the scope of Phase Four would interfere with the orderly conduct of these proceedings, as well  
21 as defeat the purpose of dividing the trial of this complex action into distinct Phases.

22 The District is informed and believes that during Phase Four, Vulcan will attempt to use the  
23 proposed move of its Sun Valley facility to inflate its claim of current reasonable and beneficial use of  
24 water for the Big Rock Creek parcels. As ordered by this Court, the parcels located at the Big Rock  
25 Creek and Palmdale facilities are the only parcels to be adjudicated during Phase Four as it relates to  
26 Vulcan. Thus, allowing testimony and evidence of such a speculative move would be severely  
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28 <sup>1</sup> Vulcan submitted two declarations with the same title "Declaration of Robert Bowcock In Lieu of Deposition Testimony For Phase 4 Trial." One of these declarations pertains to water usage at its Palmdale facility, to which the District has no objections.

1 prejudicial to the parties as it confuses the issue of current groundwater production at Big Rock Creek  
2 to include water production from a different facility that does not use Antelope Valley groundwater.

3 Moreover, Vulcan is attempting to use past production amounts at the Sun Valley facility to  
4 argue that its future water needs at Big Rock Creek will be greater once this move takes place. It is the  
5 District's position that such a move is not imminent and those future water requirements of the Big  
6 Rock Creek facility is outside the scope of the issues to be tried in Phase Four, thereby creating  
7 substantial danger of undue prejudice and of confusing the issues. Additionally, the Court should not  
8 allow Vulcan to simply transplant water requirements from one facility to the other as this will  
9 necessitate undue consumption of time.

10 i) Undue prejudice and confusing the issues

11 To allow evidence outside the scope of the issues to be tried in Phase Four defeats the primary  
12 purpose of splitting this action into different phases – efficient resolution of the dispute. (C.C.P. §  
13 1048, subd. (b) [“The court, in furtherance of convenience or to avoid prejudice, or when separate trial  
14 will be conducive to expedition and economy, may order a separate trial of any cause of action...or of  
15 any separate issue or of any number of causes of action or issues...”].)

16 This Court has stated in its First Amendment to Case Management Order for Phase Four Trial  
17 that the purpose of Phase Four is to “address the issue of the **current** groundwater production...of all  
18 parties, **proof** of claimed reasonable and beneficial use of the water for **each parcel to be**  
19 **adjudicated**, and the claimed return flows from imported water, **for the calendar year 2011 and**  
20 **January 1 through November 30, 2012.**” (First Amendment to Case Management Order for Phase  
21 Four Trial, p. 2, lines 4-11 [emphasis added]; attached hereto as Exhibit “B”.) This Court has  
22 additionally allowed parties that wish to produce evidence during the years 2000 through 2012 to do  
23 so if they timely produce such evidence in discovery. The scope of Phase Four is limited to the  
24 parties' claimed reasonable and beneficial uses of water based on the amounts of “water **used** by each  
25 party” and the identification of the beneficial use to which that amount was applied. (Id., lines 11-13.)

26 According to Mr. Bowcock, all of the rock that is excavated at Big Rock Creek is washed at  
27 the Sun Valley facility, and thus, he reasons that the groundwater production amounts required at the  
28 Big Rock facility should be an aggregate of the production requirements for the Big Rock Creek and

1 Sun Valley facility. (see Deposition of Robert Bowcock (April 11, 2013), hereinafter referred to as  
2 “Bowcock Deposition”, 35:8-37:18. Relevant pages from the Bowcock Deposition are attached as  
3 Exhibit “D”.) In making this assertion, Vulcan is essentially arguing that the past groundwater  
4 production at the Sun Valley facility represents the projected future use of water at the Big Rock Creek  
5 facility once the Sun Valley facility is relocated. However, such future use is not an issue to be  
6 determined in Phase Four. Phase Four is to address the issue of *current* groundwater production for  
7 the parcels to be adjudicated. None of the Sun Valley parcels overlie the Antelope Valley Area of  
8 Adjudication as decided by this Court. Therefore, the facilities in Palmdale and Big Rock are the only  
9 facilities relevant to Phase Four and any mention of the Sun Valley facility’s groundwater production  
10 should be excluded.

11 Vulcan has provided the current groundwater production at the Big Rock facility in its  
12 Declaration of Robert Bowcock. Vulcan claims groundwater rights “only as to the properties” listed  
13 in Exhibit A of its Declaration. (Bowcock Decl., p. 1, line 13-14.) All of the parcel numbers in  
14 Exhibit A of that Declaration make up the Big Rock Creek facility. (Bowcock Deposition, 33:9-14.)  
15 Exhibit “D” of the Declaration states that the production of water for the Big Rock Creek parcels for  
16 years 2011 and 2012 are 30.77 and 21.82, respectively. (Bowcock Decl., p. 11.) Thus, the average  
17 production of water at the Big Rock Creek facility for those years is 26.30 acre-feet per year. If the  
18 groundwater production at the Sun Valley facility is factored in, the average production increases to  
19 2,046 acre-feet per year. Vulcan has a clear incentive to convince this Court that the Sun Valley  
20 operation will be moving to Big Rock Creek so that it can secure more groundwater. However, Phase  
21 Four is limited in scope to the current groundwater production of the parcels to be adjudicated at the  
22 Big Rock Creek and Palmdale facilities and the future water requirements of the Big Rock Creek  
23 facility are not at issue.

24 ii) Undue consumption of time

25 Based on the foregoing, the District has reason to believe that Vulcan will spend the majority  
26 of its time during Phase Four attempting to convince this Court that its current average production at  
27 the Big Rock facility is 2,046 acre-feet per year, and not 26.30 acre-feet per year. Vulcan bases this  
28 figure on the assumption that its Sun Valley operation will be moved to Big Rock Creek at some point

1 in the future. Allowing Vulcan to refer to this move as its basis for determining a higher production  
2 amount would necessitate an undue consumption of time as this move is purely speculative in nature.  
3 There are at least three reasons why the relocation of the Sun Valley operations is purely speculative  
4 and would consume undue time in what has already been an extraordinarily lengthy proceeding.

5 First, Vulcan has been unable to provide any documentation evidencing such intent to move.  
6 Although Mr. Bowcock contends that the move is “imminent” (Bowcock Deposition, 63:6, 19), none  
7 of the documents produced during discovery pertains to or even mentions a plan to relocate the Sun  
8 Valley operation. Vulcan produced two documents during discovery: the Amended Reclamation Plan  
9 and a CEQA document. Neither of which mentions Vulcan’s intentions to move its operations, despite  
10 Mr. Bowcock’s numerous assertions that such a document exists:

11 Q: All writings relating to the proposed move of the Sun Valley operations to Big Rock  
12 Creek. Do any such documents exist?

12 A: You have been provided them.

13 Q: All writing relating to proposed facilities at Big Rock Creek, including plant production  
14 capacities. Are there any such documents?

14 A: ...it’s part of the California Environmental Quality Act documents.

15 (Bowcock Deposition, 22:22-25, 23:5-11.)

16 After much prodding, Mr. Bowcock admits that the documents he provided do not articulate  
17 Vulcan’s intent to move its operations:

18 Q: You’re representing that such documents exist; and then when I asked you if you had  
19 given them to me, you said yes. And so I guess I’m going to ask you to look again at  
20 this amended reclamation plan and tell me whether and where it says anything about  
21 moving Sun Valley operations to Big Rock.

21 A: I don’t believe that document does...It may be in the CEQA document, but I’m not  
22 sure.

22 Q: Do you know if [the CEQA document] talks about moving the operations?

22 A: I do not believe it does.

23 (Bowcock Deposition, 61:4-15, 62: 3-5.) Mr. Bowcock later explains that Vulcan is planning  
24 on filing additional CEQA documents specifically for moving the Sun Valley operation to Big Rock  
25 Creek but that, to his knowledge, those documents have yet to be prepared. (Bowcock Deposition,  
26 62:16-21.)

27 Second, this move is speculative because Vulcan has no definitive timeline for the move but is  
28 rather basing its move on a presumption that the market demand for its rock product will increase in

1 the future. When asked when the processing operation is going to be moved from Sun Valley to Big  
2 Rock Creek, Mr. Bowcock responded, "I don't know. It's probably market driven." (Bowcock  
3 Deposition, 57:3-9.) "When the market demands it, corporate America spends the money." (Bowcock  
4 Deposition, 62:21-23.)

5 The fact that Vulcan has been unable to produce a single document during discovery to show  
6 its intent to physically move the Sun Valley operation to Big Rock and the fact that this "imminent"  
7 move is based on a general speculation that the market demand for Vulcan's rock product will increase  
8 in the future show that, at this point, Vulcan has no definitive plans to relocate its operations to Big  
9 Rock Creek.

10 Third, the groundwater production requirements for the postulated brand new processing  
11 facility at Big Rock Creek cannot simply be equated to the existing water use at Sun Valley. The  
12 District is prepared to present expert testimony that the actual water use would be much less.

13 Therefore, a great amount of time and effort would be wasted on litigating this issue when the  
14 real issue during Phase Four should be determining the current, not future, groundwater production at  
15 the Big Rock Creek and Palmdale facilities.

16  
17 **III. CONCLUSION**

18 Based on the foregoing, Palmdale Water District requests that the Court grant its motion in  
19 limine, excluding, from introduction at Phase Four trial any evidence related to groundwater  
20 production at the Vulcan Sun Valley facility.

21  
22 Dated: May 13, 2013

LAGERLOF, SENEAL, GOSNEY & KRUSE, LLP

23  
24 By: \_\_\_\_\_  
25 Thomas S. Bunn III.  
26 Attorneys for Defendant,  
PALMDALE WATER DISTRICT

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1. I am an attorney licensed to practice law before the courts of the State of California. I am employed by the law firm of Lagerlof, Senecal, Gosney & Kruse, LLP. I have personal knowledge of the following, and, if called as a witness, I would and could competently testify thereto.

9                   3.       Attached hereto as “Exhibit B” to this declaration is a true and correct copy of the First  
10 Amendment to Case Management Order for Phase Four Trial.

14           5.       Attached hereto as “Exhibit D” is a true and correct copy of pages 22-23, 33, 35-37, 57,  
15 and 61-63 of the Transcript of Deposition of Robert Bowcock (Volume 1), taken on April 11, 2013.

19 I declare under penalty of perjury of the laws of the United States that the foregoing is true and  
20 correct and that this declaration was executed on this 13<sup>th</sup> Day of May, 2013, at Pasadena, California.

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